

CHAPTER 14. COMPROMISE OF CLAIMS OF MINORS AND INCOMPETENT PERSON

14.1 Compromise of Claims

All petitions and orders for the compromise of claims of minors or incompetent persons pursuant to Probate Code section 3500 and Code of Civil Procedure section 372, whether by way of compromise, covenant not to sue, or stipulated judgment, shall in addition to the requirements of rule 241, California Rules of Court, comply with the following rules.

- a. The petition shall contain a full disclosure of all information which has any bearing upon the reasonableness of the compromise and settlement, such as the sums, if any, to be paid to the other claimants in the same case.
- b. In any case in which the court orders the sum to be received by the minor to be deposited in a financial institution, the order shall contain the further order that "A certified or endorsed copy of this order shall be delivered to the manager of said financial institution to be deposited, and that there shall be a receipt of said financial institution filed with the clerk of the department in which the compromise was approved, acknowledging receipt of both the sum deposited and said order."
- c. The receipt of the financial institution shall set forth the name of the account, the account number, the type of account, the amount of initial deposit, the amount on deposit as of the date of the receipt, the date the account was opened. The receipt should acknowledge that "No withdrawals of principal or interest be made from said account (s) without the written order under this case name and number therefore signed by a judge and bearing the seal of said court. The monies are not the subject of escheat."
- d. It is the duty of counsel, and if the petitioner is not represented by counsel it is the duty of petitioner, to cause the receipt described above to be filed with the court no later than fifteen (15) days after the order requiring the sum to be received to be deposited in a financial institution.
- e. In any case where the court order was made prior to March 4, 1972, any use of or reference to the words "age of majority," "adult" "age of minority," "minor" or words of similar intent shall make reference to persons older or younger than 21 years of age, consistent with the law then in effect, provided, however, that such orders made prior to March 4, 1972 shall be subject to amendment to reflect the new age of majority where such amendment is deemed proper in the discretion of the court.

In orders made for compromise on or after March 4, 1972, the age of majority shall be 18 years of age.

- f. If no action is pending, or if an action is pending and settlement is reached before trial has commenced, a petition for compromise of the claims of minors or incompetent persons shall be filed and heard in the department regularly hearing probate matters. If a petition is presented after trial has commenced, approval of the settlement shall be made in the trial department.

Eff. Jan. 1, 1999. As amended, eff. Jan. 1, 2000.

14.2 Attorney's Fees for Compromise

On any application for approval of a compromise of a claim, the attorney's fees set forth herein shall be considered reasonable under normal circumstances. In computing fees on the basis of the amount of the judgment, special damages allotted to the parents and costs paid or incurred by any attorney shall be first deducted therefrom.

- a. Settlement without commencement of a court trial, under either Code of Civil Procedure section 372 or Probate Code section 3500: 25 percent.
- b. Recovery of judgment or obtaining settlement after court trial has commenced: 33-1/3 percent.
- c. Settlement after filing appellant's opening brief on appeal: 40 percent.

In cases involving unusual circumstances or conditions, the foregoing fees shall be subject to variation by the court to meet such circumstances or conditions.

In actions governed by the Medical Injury Compensation Reform Act (MICRA), the fees authorized by this rule may not exceed the amount of fees permitted by section 6146(a) of the Business and Professions Code. To the extent the fees permitted by section 6146(a) exceed the fees allowed under this rule, the provisions of this rule shall prevail.

Eff. Jan. 1, 1999.

14.3 Withdrawal of Funds

- a. It is the duty and the policy of the court to protect the funds of minors and not to allow withdrawals except in very urgent and unusual situations. It is the duty of parents of minors to provide for their support and education. Funds belonging to minors should not ordinarily be used for such

purposes. The court will never allow withdrawals for the benefit of parents or any person other than the minor.

- b.** Requests for withdrawal of funds deposited for minors and incompetent persons will be allowed only upon filing a verified petition, or ex parte application, which shall include a showing of the amounts previously withdrawn, the balance on deposit at the time of filing said petition, a justification for said withdrawal (including the reasons why the parents or parent are unable to provide the needed funds) and the attorney's fees, if any, requested incident thereto.
- c.** The order shall fix such fees, and no other fees shall be charged. In the absence of unusual circumstances, where the attorney for the petitioner was allowed fees at the time of settlement, it is the policy of the court to consider this an incidental service for which payment has been included in the original allowance.
- d.** Any order authorizing the withdrawal of funds for the purpose of transferring said funds from one financial institution to another shall contain the language set forth in section 14.1(b) of local rules and shall further provide that the draft of the institution from which the funds are withdrawn shall be payable to the financial institution to which the funds are to be transferred for deposit in such a blocked account. A receipt from the financial institution to which the funds are transferred containing the information and language set forth in section 14.1(c) of the local rules shall be filed with the court.
- e.** Applications for withdrawal of sums shall be filed and heard in the probate department.

Eff. Jan. 1, 1999.

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